

1999

Frances R. Bolliger v. Ronald E. Bolliger : Brief of Appellee

Utah Court of Appeals

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Suzanne Marelius; Littlefield and Peterson; Attorney for Appellee.

Michael A. Jensen; Attorney for Appellant.

Recommended Citation

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IN THE UTAH COURT OF APPEALS

FRANCES R. BOLLIGER

Petitioner and Appellee,

-vs-

RONALD E. BOLLIGER

Respondent and Appellant.

CASE NO. 990350-CA

APPEALS

BRIEF

JUDGMENT

Priority 15

990350

BRIEF OF APPELLEE

Appeal from the Judgment and Order of the
Third Judicial District Court, Salt Lake County, State of Utah
The Honorable Stephen L. Henriod, Third District Court Judge

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TABLE OF CONTENTS

TABLE OF AUTHORITIES	3
STATEMENT OF JURISDICTION	4
STATEMENT OF ISSUES	4
STANDARD OF REVIEW	5
DETERMINATIVE STATUTORY PROVISIONS	5
STATEMENT OF THE CASE	5
STATEMENT OF FACTS	6
SUMMARY OF ARGUMENT	9
ARGUMENT	10
I. <u>The Respondent Failed to Marshal the Evidence</u>	10
II. <u>The Trial Court Correctly Denied Respondent's Petition to Reduce Alimony</u>	11
III. <u>The Petitioner Should Be Awarded Her Attorneys Fees for this Appeal</u>	16
CONCLUSION	17
CERTIFICATE OF MAILING	19
ADDENDUM	20

TABLE OF AUTHORITIES

CASES

<i>Crockett v. Crockett</i> , 836 P.2d 818, 821 (Utah Ct. App. 1992)	5, 16
<i>Fullmer v. Fullmer</i> , 761 P.2d 942, 951 (Utah Ct. App 1988)	11, 12
<i>Howell v. Howell</i> , 806 P.2d 1209, 1211 (Utah Ct. App)	9
<i>Cert Denied</i> , 817 P.2d 325 (Utah 1991)	9
<i>Moon v. Moon</i> , 973 P.2d 431 (Utah Ct. App. 1999)	11
<i>West Valley City vs. Majestic Inv. Co.</i> , 818 P.2d 1311, 1313 (Utah Ct. App 1991) ...	9

STATUTE

§30-3-5(7)(g)(i), Utah Code Annotated	5
§30-3-3, Utah Code Annotated	

IN THE UTAH COURT OF APPEALS

FRANCES R. BOLLIGER,

Petitioner and Appellee

-vs-

RONALD E. BOLLIGER,

Respondent and Appellant.

**BRIEF OF
APPELLEE**

Case No. 990350-CA

Priority 15

Appellee, Frances R. Bolliger, hereinafter "Petitioner" submits the following brief:

STATEMENT OF JURISDICTION

This Court has jurisdiction over this appeal pursuant to Rule 3 and 4 of the Utah Rules of Appellate Procedure and §78-2a-3(2)(h), *Utah Code Annotated* (1998).

STATEMENT OF ISSUES

1. Did the Appellant correctly marshal the evidence for this appeal?
2. Did the trial court correctly determine that there had been no substantial, material changes in circumstances to support a decrease in alimony?
3. Did the trial court err in finding that the retirement of Ronald Bolliger (hereinafter "Respondent") was foreseeable and was this finding even material to the final ruling of the trial court?

4. Did the trial court act within its sound discretion to deny any reduction in alimony when the comparative incomes of the parties at the time of trial were essentially equal?

5. Should Petitioner be awarded her attorneys fees and costs for the appeal, payable by Respondent?

STANDARD OF REVIEW

This Court must review the trial court's interpretation of *Utah Code Annotated* §30-3-5 (7)(g)(i) and the ruling on the Petition for Modification, under an abuse of discretion standard. Trial courts may exercise broad discretion in divorce matters, absent manifest injustice or inequity that indicates a clear abuse of discretion. *Crockett v. Crockett* 836 P.2d 818 (Utah Ct. App. 1992).

DETERMINATIVE STATUTORY PROVISIONS

Petitioner sets forth in the attached Addendum, the complete code provisions referenced in this brief as follows:

1. *Utah Code Annotated* §30-3-5(7)(g)(i)
2. *Utah Code Annotated* §30-3-3

STATEMENT OF THE CASE

This is an appeal from a final order of the Third Judicial District Court, in and for Salt Lake County, State of Utah, the Honorable Stephen L. Henriod, presiding.

The parties in this action were divorced by Decree of Divorce entered in the Third Judicial District Court on or about March 3, 1987. That divorce was finalized by

Stipulation of the Parties and after a marriage of 34 years. Respondent, Ronald E. Bolliger filed a Petition to Modify on or about October 14, 1997 alleging there had been a substantial material change in circumstances since entry of the decree to reduce alimony. Petitioner, Frances R. Bolliger filed a Counterclaim for Modification on or about November 12, 1997 alleging that if the Court found changed circumstances, then her alimony should be increased.

At the time of trial, the parties had filed a Stipulation of Undisputed Facts (Addendum "2"). Both parties in this action resided out of state and counsel agreed to stipulate to relevant facts and file written arguments with the Court in lieu of trial testimony. The Court provided an opportunity for hearing and argument on December 8, 1998. At that time, the Court made a bench ruling denying the Petition of Respondent to decrease alimony. Amended Findings and Amended Order of Modification were entered February 4, 1999 (Addendum, A-1). This appeal followed.

STATEMENT OF FACTS

Petitioner submits the following statement of facts:

1. Petitioner, Frances R. Bolliger resides in Arizona and is age 64.
2. The parties in the action were married approximately 34 years prior to their divorce; they have three adult children as issue from their marriage.
3. Since the divorce of the parties was final March 3, 1987, the Petitioner has remained unmarried. (Findings of Fact, Conclusions of Law, Decree of Divorce - Addendum - 14). The Respondent remarried in April, 1989.

4. The Decree of Divorce awarded to Petitioner permanent alimony in the sum of \$685.00 per month commencing April, 1987; additionally, she was awarded one-half of the military retirement benefits being received by the parties. The Respondent was also ordered to pay Petitioner one-half of any increases he received in his military retirement benefits. Lastly, the Decree required Respondent to pay the premium on three policies of life insurance with Petitioner as beneficiary and to maintain the premium on the Air Force Survivor's Benefit Plan with her as beneficiary.

5. The Findings of Fact and Conclusions of Law entered at the time of the Decree, stated that Respondent was employed full time at Sperry Corporation and earned a gross annual income of approximately \$45,600.00 per year. Further, that he was a member of the Air Force for 28 years and received an Air Force pension of approximately \$1,428.00 per month. The Findings stated that Petitioner was employed part time at a restaurant earning \$4.00 per hour, for a gross monthly income of approximately \$340.00.

6. The Affidavit of Frances E. Bolliger dated October 13, 1998, of record in this matter, stated that she ceased part time employment as a waitress in 1991 due to health problems. At that time, she was earning approximately \$500.00 a month as a waitress. Her Affidavit confirmed increasing health problems including arthritis in her hands and legs which prevented her ability to continue working as a waitress. She also has had treatment and surgery for ulcers; suffered a stroke in April, 1998 which affected her left side; was diagnosed with Bell's Palsy in 1992; suffers from high blood pressure requiring medication; and had surgery to remove facial bone fungus in 1998. The Affidavit included

a letter from her treating physician, Guy Cary, M.D., stating that Petitioner's neurological problems prevent her from being employed. (Addendum, A-28).

7. At the time of trial in this matter, Petitioner's income consisted of the following: Social Security benefits in the amount of \$521.00 per month; alimony from Respondent in the amount of \$685.00 per month; Half the Respondent's Air Force Retirement in the amount of \$1,184.00 per month for a total monthly income of \$2,390.00. (Addendum A-10).

8. At the time of trial in the matter, Respondent was retired from full time work and was receiving pension payments from L3 Communications of \$682.00 per month; Social Security benefits in the amount of \$1,071.00 per month; half of his Air Force Retirement in the amount of \$1,184.00 per month for a total of \$2,937.00 per month.

9. At the time of trial in the matter, after Respondent paid to Petitioner the Court ordered alimony of \$685.00 per month; Petitioner's total monthly income was \$2,390.00 and Respondent's income was \$2,252.00; a difference of \$138.00.

10. At the time of trial, the Trial court determined as a threshold matter, that there had not been any substantial change in circumstances since entry of the Decree, which were unforeseen by the parties and which would support any modification to the Decree. The Court found that the current difference in the parties' income which was stipulated as \$138.00, was an insufficient difference to warrant any change to the Court Orders herein. (Addendum A-2). The Court noted that the alleged changes asserted by Respondent consisting of his retirement and the receipt by the parties of Social Security benefits were

foreseeable events. Further, that the Decree of Divorce in this matter set forth the agreement of the parties based on a stipulation to a permanent alimony award.

SUMMARY OF ARGUMENT

1. The Respondent has failed to marshal the evidence for this Appeal. The appellate court cannot determine whether findings are erroneous where the exercise of Trial court discretion was proper, unless the Appellant properly marshals evidence. This Court has defined the marshaling requirement as requiring the Appellant to cite "every scrap of competent evidence introduced at trial" that supports the trial court's findings. *West Valley City vs. Majestic Inv. Co.*, 818 P.2d 1311, 1313 (Utah Ct. App. 1991). It is also evident that what facts the Appellant does include are one-sided and are selected facts favorable to Respondent's position, rather than properly marshaled evidence.

2. The trial court did not abuse its discretion in denying the request of Respondent for a reduction in alimony. The Court correctly found that there had not been proven a substantial material change of circumstances since entry of the Decree of Divorce in this matter. It is well settled that property and alimony awards "will be upheld unless a clear and prejudicial abuse of discretion is demonstrated." *Howell v. Howell*, 806 P.2d 1209, 1211 (Utah Ct. App.) *Cert Denied*, 817 P.2d 325 (Utah 1991).

3. The Trial court correctly found that the Respondent's retirement from Sperry Corporation and the receipt by both parties of Social Security benefits was foreseeable. Further, even if the Court was incorrect in this finding, the result in this matter would be

unchanged given the Respondent's failure to persuade the Court of the threshold requirement that a substantial change of circumstances existed.

4. The Petitioner should be awarded judgment for attorneys fees and costs arising from the appeal, payable by Respondent. Petitioner was awarded fees by the trial court and the record supports her need and Respondents ability to pay.

ARGUMENT

I. The Respondent Failed to Marshal the Evidence.

This Court has stated on many occasions that a critical requirement of appellate advocacy is the duty of the Appellant to marshal the evidence when challenging the trial court's findings of fact. The Respondent in this case attacks the Trial court's findings in several respects. For example, Appellant states that the Decree is "void of any mention or reference of retirement benefits for either party . . . [and that] there is nothing in the Decree or the record to indicate that Social Security Benefits were estimated or considered for either party" (Brief of Appellant, page 10). The Brief of Appellant does not even contain a Statement of Facts. Rather, there is a Statement of The Case which contains 11 numbered paragraphs which is argumentative and selective in presenting only facts that support Respondent's position. There is no reference in that section to the health problems of Petitioner which are a significant aspect of her continuing need for alimony and inability to work. There is also no reference to the trial court's finding that the present incomes of the parties are only \$138.00 apart and that "in prior years, the difference always favored the Respondent." (Addendum, A-2)

In the recent case of *Moon v. Moon*, 973 P.2d 431 (Utah Ct. App. 1999), the Court found on appeal that Mr. Moon had simply reargued his own evidence and because he failed to marshal the evidence supporting the trial court's findings, the Appellate Court had to assume that the record supported the findings of the trial court. Similarly, in this case, the failure to marshal the evidence must also lead to the Appellate Court herein affirming the findings of the trial court as complete and correct, for purposes of this appeal.

II. The Trial Court Correctly Denied Respondent's Petition to Reduce Alimony.

The overall focus of Respondent's argument to decrease alimony in this case is that there has been a large percentage decline in Respondent's income because of his retirement. Nowhere in his brief does Respondent actually compare the incomes at the time of entry of the Decree of Divorce to the incomes at the time of the modification trial. Correctly, this comparison was made by the trial court and formed a specific basis for the trial court's finding that there was no substantial material change in circumstances to justify reducing alimony. This direct income comparison is also conspicuously absent from the statement of the case in Appellant's Brief.

The trial court was clearly mindful of the standard in Utah courts, that for a trial court to reduce or terminate alimony, the Court must be "persuaded that the [recipient's spouse] will be able to support herself at a standard of living to which she was accustomed during the parties' marriage or that [the payor's spouse] is no longer able to pay." *Fullmer v. Fullmer*, 761 P.2d 942, 951 (Utah Ct. App. 1988). The income comparison in the present case was undisputed and based on a written stipulation of relevant facts filed by the parties.

The trial court made the following specific finding on changes in circumstances: "The Court is also not persuaded that the current difference in the parties' incomes which has been stipulated is \$138.00, is a sufficient difference to warrant any change to the Court Orders herein." (Addendum "1"). Thus, whether the Appellant's complicated calculations showing that Respondent's income from the time of his full time employment to the time of his retirement has been reduced 1% or 90% is beside the point. Rather, in focusing on the *Fullmer* requirement, and comparing the present incomes of the parties, the trial court was correctly persuaded that there was no substantial material change in circumstances to justify a reduction in alimony.

The burden of Respondent at the time of trial was to first show that there had been a substantial material change of circumstances not foreseeable at the time of divorce to meet the statutory threshold before a modification can occur. The trial court found that Respondent had failed to meet this burden. The only changes asserted by Respondent at the time of trial to meet this burden were first, the fact of Respondent's retirement from full time employment and second, the parties' receipt of Social Security Benefits. The Court found neither of these events to be unforeseeable or persuasive in establishing changed circumstances. Appellant also misunderstand the modification requirements by claiming that the failure to find these elements were foreseeable was an error by the Court. The trial court had not even reached the question of foreseeability if it is not persuaded that substantial changed circumstances exist. If such a substantial change can be found, the Court would then consider whether that change was foreseeable at the time of entry of the

Decree of Divorce. In the present case, it is evident that the trial court did not even find a change of circumstances so the question of foreseeability does not even arise.

Correctly, the trial court focused on the key issue in this alimony modification request which is the level of incomes of the parties. The Stipulation of Undisputed Facts filed in advance of trial, showed there was no dispute on the income issues. The incomes at the time of entry of the Divorce Decree were clearly stated in the Findings of Fact and Conclusions of Law which showed that Petitioner worked part time and earned \$340.00 gross per month, and Respondent worked full time and earned \$3,800.00 gross per month. The Stipulation on current incomes filed by the parties showed that Petitioner was currently unemployed and was receiving Social Security Benefits of \$521.00 per month. The Stipulation showed that in 1996, Respondent earned \$90,040.00, in 1997, he earned \$58,286.00 and for his first full year of retirement from pension alone, expected to earn \$28,764.00 or \$2,397.00 gross monthly. There is no question that Respondent's earnings have decreased significantly from the time he was employed full time, but that alone does not establish a change of circumstances to reduce alimony. The trial court compared the parties' current incomes and found that after Respondent's payment of alimony, at the level ordered in the Decree of \$685.00 per month, that the present difference in the parties' incomes was only \$138.00 which the Court found to be an insufficient difference to warrant any change in alimony. The analysis of the trial court which focused first and foremost on whether a change of circumstances had occurred was correct and should be affirmed. The Respondent's line of argument on whether retirement and receipt of Social Security

Benefits are foreseeable events is beside the point and only begs the question as to whether or not substantial changes of circumstances has been established. Since Respondent failed to carry his burden on proof to persuade the trial court that there was a change of circumstances, the foreseeability analysis is irrelevant.

The Appellant takes many pages in his brief to assert that there has been a large percentage decrease in Respondent's income without ever comparing the actual income numbers. Certainly, percentage changes in income alone should never be allowed to support a change in circumstances. Considering the span of time in this case of 11 years, it is reasonable to expect that there would be substantial changes in incomes due to factors such as inflation or job changes over that period of time. The relevant analysis should instead, focus on the alimony factors such as comparative earning ability, the ability of a party to support himself/herself in the standard of living established at the time of marriage, and so forth. The trial court again was entirely accurate in declining to find a change of circumstances when the difference in the parties' monthly income was only \$138.00. The Court also noted that "it is evident that ever since the divorce, there has been a much greater difference between the incomes of the parties than the present gap of \$138.00, and that in prior years, the difference always favored the Respondent." This comment strikes at the heart of Respondent's argument that his client should be entitled to a larger share of earnings rather than simply have his earning level be equal or near that of Petitioner's. A

quick calculation shows that at the time of the divorce, Respondent was earning \$3,800.00 gross per month from his full time, he received half the Air Force pension of \$714.00 and paid alimony of \$685.00, leaving him with \$3,829.00 each month. The Petitioner worked part time earning \$340.00 gross, received one half the Air Force pension of \$714.00, and received alimony of \$685.00 for a total monthly earning of \$1,739.00. At the time of the divorce, Petitioner was thus earning 45% of what Respondent was earning.

At the present time, the current incomes as stipulated at the time of the modification trial, show that the Petitioner earned \$2,390.00 after receipt of Social Security, Air Force pension and alimony and Respondent earned \$2,252.00 after receipt of Air Force pension, Social Security and payment of alimony. Thus, the gap between the parties' income has closed substantially and they are essentially equal in monthly earnings with Respondent earning 94% of what Petitioner earns. The Court found this difference to be insignificant and that it did not show a substantial change of circumstance sufficient to justify a reduction in alimony. The entire thrust of Respondent's argument seems to be that because the gap between the parties' incomes has closed so dramatically, his client is entitled to relief. There is no authority provided in Appellant's Brief for this theory which is unsupportable under the policy and case law of alimony in this jurisdiction. Thus the Findings and Orders of the trial court to deny any change to alimony based on the failure

of Respondent to establish substantial material change in circumstances should be affirmed.

III. The Petitioner Should Be Awarded Her Attorneys Fees for this Appeal.

The trial court found that the Petition for Modification of support orders was denied in its entirety, that Petitioner incurred costs and fees to defend the Petition and was in need of financial assistance to pay those expenses. Further, that the Respondent had an ability to assist Petitioner with her costs and fees and after reviewing a Memorandum of Attorneys Fees and finding those sums to be reasonable, the trial court awarded to Petitioner a judgment for attorneys fees in the amount of \$2,925.50.

It is well-settled that a trial court may award costs and attorneys fees in a modification proceeding. UCA §30-3-3 (1998). The decision to award fees and the amount of such fees are within the sound discretion of the trial court. *Crockett v. Crockett*, 836 P.2d 821 (Utah Ct. App. 1992). The Court herein considered the appropriate factors in awarding fees to Petitioner for the trial by reviewing evidence of her financial need, the ability of Respondent to pay and the reasonableness of the requested fees. The attorneys fees awarded at trial have not been challenged on appeal. Thus, the trial record stands demonstrate uncontroverted to Petitioner's financial need and Respondent's ability to pay and Petitioner should thus be awarded all attorneys fees and costs reasonably incurred for this Appeal.

CONCLUSION

It is apparent that the Respondent has failed to make any attempt to marshal the evidence presented to the trial court and on this basis, the this Court must accept as adequate and complete, the trial court's Findings of Fact. Any challenges to the adequacy of such findings should be denied or resolved in Petitioner's favor.

The trial court correctly applied controlling law to deny the Petition to Reduce Alimony based on the failure of Respondent to prove any substantial material change in circumstances since entry of the Decree. Although Respondent attempts to distract the Court from the key issues by arguing that retirement was not foreseeable and that Respondent has had a large percentage of reduction in income, these issues are not material. Rather, the trial court correctly analyzed the question of whether a change in circumstance had occurred by comparing the actual, real incomes of the parties and finding that the present discrepancy of \$138.00 between their actual earnings was not sufficient to support a change of circumstances. Once the smoke and mirrors of Respondent's argument is taken away, it is apparent that he seeks a reduction in alimony based entirely on the fact that he believes he deserves more monthly income than the Petitioner simply because it's always been that way. If the Court were to apply the common, equalization of income approach to this long term marriage, it would only be a \$69.00 monthly amount to equalize

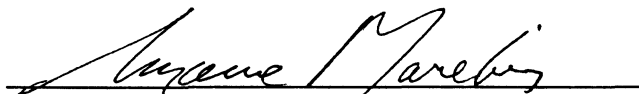
incomes. Given that fraction, the Court wisely declined to make any adjustment to alimony.

It is appropriate that the trial court award to Petitioner her attorneys fees and costs on appeal based on the court's findings that such an award was appropriate. The Respondent does not challenge the award of fees at the trial court level.

For the foregoing reasons, this Court should affirm the Findings and Order of the trial court and deny the appeal as there has been no abuse of discretion established herein.

Respectfully submitted this 20 day of September, 1999.

LITTLEFIELD & PETERSON

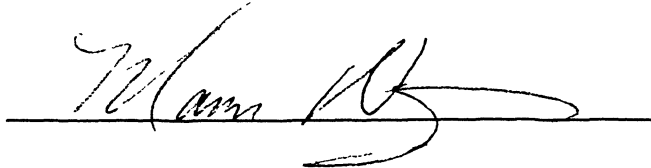
A handwritten signature in cursive script, appearing to read 'Suzanne Marelius', is written over a horizontal line.

Suzanne Marelius
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CERTIFICATE OF MAILING

I, the undersigned, hereby certify that I caused two copies of the foregoing Brief of Appellee to be mailed this 26th day of September, postage prepaid, to:

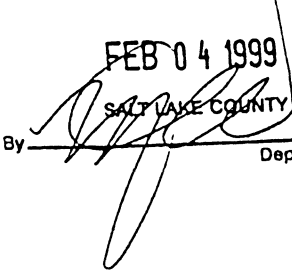
Michael A. Jensen
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136 South Main Street, Suite 300
Salt Lake City, UT84101

A handwritten signature in black ink, appearing to read "Michael A. Jensen", is written over a horizontal line.

ADDENDUM

1. Findings of Facts and Conclusions of Law; and Amended Order on Modification - Entered February 4, 1999;
2. Stipulation of Undisputed Facts, dated October 19, 1998.
3. Findings of Fact, Decree of Divorce, entered March 3, 1987.
4. Affidavit of Frances R. Bolliger, October, 1998.
5. *Utah Code Annotated* §30-3-5(7)(g)(i)
6. *Utah Code Annotated* §30-3-3 (1988)

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FILED DISTRICT COURT
Third Judicial District
FEB 04 1999
SALT LAKE COUNTY
By  Deputy Clerk

IN THE THIRD JUDICIAL DISTRICT COURT
IN AND FOR SALT LAKE COUNTY, STATE OF UTAH

-----ooOoo-----	
FRANCES R. BOLLIGER,	AMENDED FINDINGS OF FACT AND
Petitioner,	CONCLUSIONS OF LAW
vs.	
RONALD E. BOLLIGER,	
Respondent.	Case No. 854903252 DA
	Judge Henriod
-----ooOoo-----	

The above-captioned matter came before the Court December 8, 1998 for argument on the Petitions for Modification filed by the parties, before the Honorable Stephen L. Henriod presiding. Petitioner was represented by counsel Suzanne Marelius and Respondent was represented by counsel Michael A. Jensen. The parties had filed a Stipulation on undisputed facts and memoranda in support of arguments. The Court considered the file and record herein, argument of counsel, and being well-advised in the premises and good cause appearing does make the following:

FINDINGS OF FACT

1. Respondent filed a Petition to Modify Alimony on or about October 1997 and Petitioner filed a Counter-Petition in November 1997.

2. The parties in this action were married for 34 years until their divorce March 3, 1987. That Decree ordered Mr. Bolliger to pay alimony in the amount of \$685 per month; that the military retirement pension be divided equally; that he pay the monthly premium for the Armed Services Survivor Benefit Plan which was \$157 per month at the time of the divorce; and last, that he maintain life insurance with Petitioner as the sole beneficiary in the amount of \$86,000 from two policies then available to Respondent.

3. The Court first considered whether there had been any substantial change since entry of the Decree, unforeseen by the parties to support any modification to the Decree. The Court finds that there has been no substantial, material change in circumstances sufficient to modify the Decree. The alleged changes of Respondent's retirement and the parties' receipt of social security benefits are foreseeable events. Further the parties agreed to a permanent alimony award. The Court is also not persuaded that the current difference in the parties' incomes which has been stipulated as \$138 is a sufficient difference to warrant any change to the Court orders herein. It is evident that ever since the divorce there has been a much greater difference between the incomes of the parties than the present gap of \$138, and that in prior years the difference always favored the Respondent.

4. The Court has reviewed the Decree and arguments concerning payment of the Air Force Survivors Benefit Plan premium and finds this to be an amount Respondent is clearly ordered to pay in addition to the alimony.

5. The Respondent asserts that all but \$10,000 in life insurance is no longer available to him. The Respondent should continue to maintain, if reasonably possible, other life insurance required in the Decree and the Petitioner should continue to be the sole beneficiary on such policies.

6. The Petitioner's Motion for Contempt concerning failure to pay temporary support has been considered by the Court and is denied.

7. The Court finds that the Petition for Modification of support orders brought by Respondent has been denied in its entirety. Further, that Petitioner has incurred costs and attorney's fees to defend against this Petition and that she is in need of financial assistance for those expenses. Further, that the Respondent has an ability to assist Petitioner with the attorney's fees and costs herein. The Court has received a memorandum of attorneys fees and costs filed by Petitioner's counsel and finds the sums requested therein to be reasonable and appropriate. Considering the litigation required in this case, the complexity of the issues, the briefing required, the Court appearances and the outcome, the Court finds Petitioner's request for fees to be reasonable. Petitioner is thus awarded a judgment in the amount of \$2,925.50 representing her costs and fees incurred herein, said judgment to bear interest at the legal rate of 7.38% per annum until paid by Respondent.

Based on the foregoing, the Court does now make the following:


CONCLUSIONS OF LAW

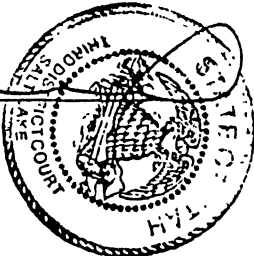
1. Petitioner is entitled to an Order denying any changes to the support orders in the Decree of Divorce which is consistent with the foregoing Findings of Fact.

2. Petitioner is entitled to a Judgment representing her costs and attorneys fees arising from this matter.


DATED this 4 day of Feb., 1998.

BY THE COURT:


STEPHEN HENRIOD
District Court Judge



Approval As to Form:


Michael A. Jensen

CERTIFICATE OF MAILING

I hereby certify that I caused to be mailed, a true and correct copy of the foregoing, FINDINGS OF FACT AND CONCLUSIONS OF LAW, this 17 day of

Jan, 1999, to:

Michael A. Jensen, Esq.
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M. A. Jensen

S12\bolliger.FFC

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IMAGED

FILED DISTRICT COURT
Third Judicial District

FEB 04 1999

SALT LAKE COUNTY

By  Deputy Clerk

IN THE THIRD JUDICIAL DISTRICT COURT

IN AND FOR SALT LAKE COUNTY, STATE OF UTAH

2124513

FRANCES R. BOLLIGER,

Petitioner,

vs.

RONALD E. BOLLIGER,

Respondent.

AMENDED ORDER ON
MODIFICATION

Case No. 854903252 DA
Judge Henriod

The above-captioned matter came before the Court December 8, 1998 for argument on the Petitions for Modification filed by the parties, before the Honorable Stephen L. Henriod presiding. Petitioner was represented by counsel Suzanne Marelius and Respondent was represented by counsel Michael A. Jensen. The parties had filed a Stipulation on undisputed facts and memoranda in support of arguments. The Court having entered its Findings of Fact and Conclusions of Law the Court does now make the following Order:

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that:

1. The Respondent's Petition for Modification to support orders is denied.

2. The Respondent is ordered to continue all support orders stated in the Decree of Divorce issued March 3, 1987 in full force and effect consisting of the following: payment of alimony to Petitioner in the amount of \$685 per month; one-half his military retirement pension along with any increases or adjustments made by the military; payment of the Air Force Survivors Benefit Plan monthly premium.

3. The Respondent is released from the requirement to maintain any insurance policies which are no longer available to him. The Respondent is ordered to maintain insurance, if reasonably available, as otherwise required in the Decree of Divorce, naming Petitioner as the sole beneficiary thereon.

4. There should be no finding of contempt for failure to pay the Court orders heretofore entered in this matter.


5. The Petitioner is awarded a judgment for her costs and attorneys fees incurred in this matter payable by Respondent in the amount of \$2,925.50 to bear interest at the legal rate of 7.38% per annum until paid plus after accruing costs of collection.

DATED this 4 day of Feb., 1998.

BY THE COURT:


STEPHEN HENRIOD
District Court Judge

Approval As to Form:


Michael A. Jensen

CERTIFICATE OF MAILING

I hereby certify that I caused to be mailed, a true and correct copy of the foregoing, **Order of Modification**, this 19 day of Jan, 1999, to:

Michael A. Jensen, Esq.
136 S. Main #300
Salt Lake City, Utah 84101-3656



S12\bolliger.ord

MICHAEL A. JENSEN (7231)
Attorney at Law
Kearns Building, Suite 300
136 South Main Street
Salt Lake City, Utah 84101-3656
(801) 266-2009; Fax: 519-9264

Counsel for Respondent

**IN THE THIRD JUDICIAL DISTRICT COURT
IN SALT LAKE COUNTY, STATE OF UTAH**

450 South State Street
PO Box 1860, Salt Lake City, Utah 84111-1860
Third District Clerk: 238-7460; In-Court Clerk: 238-7021/7022 (Amy/Paula) W47

FRANCES R. BOLLIGER,

Petitioner,

v.

RONALD E. BOLLIGER,

Respondent.

**STIPULATION OF UNDISPUTED
FACTS**

Civil No. 854903252DA

Judge Stephen L. Henroid

Commissioner Thomas N. Arnett

The parties have agreed to stipulate to the following facts for the purpose of judicial economy:

1. The Petitioner is a resident of Arizona; the Respondent is a temporary resident of Nevada.
2. The Petitioner will be 63 years of age on September 5, 1998; the Respondent became 63 years of age on January 23, 1998.

3. The Petitioner and Respondent were married approximately 34 years prior to their divorce; they have three adult children of issue from their marriage, all of whom live in the Phoenix area where the Petitioner resides.

4. The Petitioner has remained unmarried since her divorce from the Respondent; the Respondent remarried in April 1989 and remains married to the same person.

5. The Petitioner has two basic sources of income: (a) Social Security Benefits in the amount of \$521 per month and (b) alimony from the Respondent in the approximate amount of \$1,869 per month, for a total of \$2,390 per month. The alimony amount of \$1,869 is derived from two sources: half of the Respondent's Air Force Retirement in the amount of \$1,184 per month and a set amount of \$685 per month, both set by a decree of divorce entered on March 3, 1987.

6. In addition, the Petitioner claims that the premium for the Air Force Survivor's Benefit Plan, in an amount that is approximately \$160 per month, should be paid by the Respondent without any deduction for such amount from the monthly alimony payment of \$685. The Respondent believes the decree provides that such premium, which varies from time to time, is included in and a part of the \$685 alimony payment.

7. The Respondent has three basic sources of income: (a) Social Security Benefits in the amount of \$1,071; (b) half of his Air Force Retirement in the amount of \$1,184 per month; and (c) pension payments from L3 Communications in the amount of \$682 per month, for a total of \$2,937 per month, prior to making payments to the Petitioner in the

amount of \$685 per month. After paying the Petitioner, the Respondent is left with only \$2,252 per month, or, \$138 per month less than the Petitioner.

8. At the time the Decree of Divorce was entered by this Court, the Respondent was earning approximately \$5,700 per month from his Air Force Retirement and from employment at Sperry (formerly Sperry Rand, later acquired by Lockheed Martin, and later changed to L3 Communications). The Respondent's income today has decreased by \$2,763 per month, or by 48%.


9. The Respondent's Adjusted Gross Income ("AGI") in 1996 was \$90,040; his AGI in 1997 was \$58,286 (a transition year to retirement); and his expected AGI for 1998 is \$28,764 based on current income. The Respondent's income today has decreased by 68% from 1996 and by 50% from 1997.

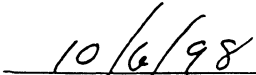
10. The Respondent was employed full-time from 1984 to March 1997 until he had to accept retirement through a reduction in force from L3 Communications. After his retirement from the Air Force and during his employment at L3 Communications, the Respondent qualified for and has earned a pension from L3 Communications in the amount of \$682 per month.

11. The Petitioner ceased employment in or about June 1991, and has not been gainfully employed since that time.


AGREED:

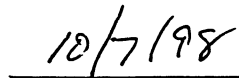
PETITIONER FRANCES R. BOLLIGER


By: Suzanne Marelius (#2081), her Attorney


Date

RESPONDENT RONALD E. BOLLIGER


By: Michael A. Jensen (#7230), his Attorney


Date

CERTIFICATE OF SERVICE

Civil No. 854903252DA

Judge Stephen L. Henroid

Commissioner Thomas N. Arnett

FRANCES R. BOLLIGER,
Petitioner,

v.

RONALD E. BOLLIGER,
Respondent.

I, Michael A. Jensen, Counsel for Respondent Ronald E. Bolliger in the above action, hereby certify that on this day I personally served the foregoing **STIPULATION OF UNDISPUTED FACTS** by personally depositing a copy thereof with the United States Postal Service, postage prepaid, to:

Suzanne Marelius (#2081)
Littlefield & Peterson
426 South 500 East
Salt Lake City, Utah 84102
(801) 531-0435; FAX: 575-7834

DATED this 14th day of September 1998.



MICHAEL A. JENSEN, Esq.
136 South Main Street, Suite 300
Salt Lake City, Utah 84101-3656
(801) 266-2009; Fax: 519-9264

FILED

MAR 3 1987

H. Dixon Murray, Clerk 3rd Dist Court
By J. H. Baerleisen
Deputy Clerk

SUZANNE MARELIUS - 2081
Attorney for Plaintiff
LITTLEFIELD & PETERSON
426 South 500 East
Salt Lake City, Utah 84102
Telephone: (801) 531-0435

IN THE THIRD JUDICIAL DISTRICT COURT
IN AND FOR SALT LAKE COUNTY, STATE OF UTAH

-----oo0oo-----
FRANCES R. BOLLIGER,)
)
Plaintiff)
)
v.)
)
RONALD E. BOLLIGER,)
)
Defendant.)
)
-----oo0oo-----

85 4903252 DA
DECREE OF DIVORCE
Bk 212 NO. 4513
3-6-87-8.13 am.
Civil No. D85-3252
(Judge David B. Dee)

JUDGMENT

The above-entitled matter came on for hearing before the Court on Wednesday, December 10, 1986, at the hour of 11:30 a.m., before Domestic Relations Commissioner Sandra N. Peuler, who, by stipulation of the parties, presided over the default divorce hearing in this matter. The Plaintiff was present in person and through counsel, Suzanne Marelius. The Defendant was present in person and through counsel, Phillip Story, Jr. The Stipulation and Agreement of the parties was read into the record and approved in open Court by both parties and their counsel. The Court having approved the same, having sworn the Plaintiff and heard her testimony, the default of Defendant was noted pursuant to Stipulation and the Court having heretofore made and entered its Findings of Fact and Conclusions of Law and being fully advised in the premises,

A-14
Exhibit A

NOW, THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND
DECREED as follows:

1. Plaintiff is hereby awarded a Decree of Divorce from Defendant on the grounds of mental cruelty, the same to become final as of March 3, 1987.

2. The parties have entered into a Stipulation and Settlement Agreement which was read into the Court record December 10, 1986, and approved by both parties and their counsel in open Court. The Court finds that this Settlement Agreement is in full compliance with the law and shall be incorporated herein.

3. The Defendant shall pay to the Plaintiff for each of the months of January, February and March, 1987, the amount of \$785.00 and the amount of \$685.00 as of April, 1987, and thereafter, as monthly alimony and one-half of the military pension retirement benefits authorized under PL97-252, 10 USCS 1408 et seq. (Former Spouse's Protection Act). The Defendant is ordered to pay to Plaintiff one-half of any increases he receives in his retirement benefits and to pass along such increases at the time his benefits are increased. The parties agree that the support payments outlined in this paragraph shall be payable by Defendant to Plaintiff one-half on the 5th and one-half on the 20th of each month. The parties further agree that Defendant's premium, presently \$157.00 per month which he shall pay to maintain the Air Force Survivor's Benefit Plan is part of his total support payment to Plaintiff. The support payments outlined

herein shall be payable to Plaintiff so long as she lives with the exception that they will cease upon Plaintiff's remarriage, cohabitation, or death.

4. The Defendant shall keep Plaintiff as the sole beneficiary under his Armed Forces Survivor Benefit Plan. Plaintiff shall thus be treated as the Defendant's spouse for all purposes under the Plan. As the surviving spouse, Plaintiff shall be entitled to any pre-retirement survivor annuity; and Plaintiff's consent shall be required for any election of benefits by the Defendant, other than the qualified pre-retirement and retirement joint and survivor annuity as provided under Section 417 of the Internal Revenue Code of 1954, as amended.

5. The Defendant is ordered to maintain hospital and medical insurance in full force and effect for the benefit of Plaintiff as it was held at the time of the filing of this divorce action on August 30, 1985. This coverage consists of Plaintiff's entitlement to CHAMPUS benefits and full medical coverage with Defendant's employer, Sperry Corporation. The Defendant shall maintain Plaintiff's full medical insurance coverage as indicated to the extent allowable under applicable law, however, Defendant's premium contribution is not to exceed his premium contribution at the time of filing the divorce, August 30, 1985. Defendant shall pay all premiums or assessments due for Plaintiff's coverage during her lifetime and so long as the coverage referred to herein is available to Defendant, subject to the foregoing limitation.

6. Defendant is ordered to maintain in full force and effect, for the benefit of Plaintiff as sole beneficiary, the life insurance policies listed as follows: the \$50,000.00 policy issued by Unisys Corporation; a \$36,000.00 policy issued by Veteran's Group Life Insurance until December 31, 1988 and the policy issued by the Air Force Association. Defendant shall pay all premiums, assessments or charges incurred for maintaining or converting these policies to make Plaintiff the sole beneficiary thereon.

7. Both of the parties shall be awarded the personal property presently in their possession as has been previously divided by them. In addition, Plaintiff is awarded the 1984 Pontiac, including the debt thereon; and Defendant shall be awarded the 1985 Toyota pickup and 1986 Dodge with the debts thereon. Defendant is ordered to pay Plaintiff's car payment for the month of December, 1986, and thereafter Plaintiff shall be responsible for the entirety of the debt remaining on the 1984 Pontiac.

8. The parties shall each be responsible to assume and discharge their separate debts incurred subsequent to the date of their separation. The Defendant is ordered to pay any balance presently due to Plaintiff's attorney, Suzanne Marelius, including any further reasonable legal fees and costs incurred relating to this proceeding, up until the date of entry.

DATED this 3 day of March, 1987.

BY THE COURT:

Sandra N. Peuler

~~DAVID G. DEE~~

District Court Judge *pro tem* ATTEST
H. DIXON HINDLEY
Clerk

RECOMMENDATION OF COMMISSIONER

by L. Anna B. de la Cruz
Deputy Clerk

Sandra N. Peuler, Commissioner, having heard the above matter, herewith recommends that the foregoing Order be entered in this matter.

DATED this ____ day of _____, 1987.

SANDRA N. PEULER
Commissioner

APPROVAL AS TO FORM:

Phillip C. Story, Jr.
PHILLIP C. STORY, JR.
Attorney for Defendant

STATE OF UTAH)
COUNTY OF SALT LAKE) SS

I, THE UNDERSIGNED, CLERK OF THE DISTRICT COURT OF SALT LAKE COUNTY, UTAH, DO HEREBY CERTIFY THAT THE ANNEXED AND FOREGOING IS A TRUE AND FULL COPY OF AN ORIGINAL DOCUMENT ON FILE IN MY OFFICE AS SUCH CLERK.

WITNESS MY HAND AND SEAL OF SAID COURT
THIS 19 DAY OF March 19 87

H. DIXON HINDLEY, CLERK

BY L. Anna B. de la Cruz DEPUTY

SUZANNE MARELIUS - 2081
Attorney for Plaintiff
LITTLEFIELD & PETERSON
426 South 500 East
Salt Lake City, Utah 84102
Telephone: (801) 531-0435

IN THE THIRD JUDICIAL DISTRICT COURT
IN AND FOR SALT LAKE COUNTY, STATE OF UTAH

-----oo0oo-----

FRANCES R. BOLLIGER,)	
)	
Plaintiff)	FINDINGS OF FACT AND
)	CONCLUSIONS OF LAW
v.)	
)	
RONALD E. BOLLIGER,)	
)	
Defendant.)	Civil No. D85-3252
)	(Judge David B. Dee)

-----oo0oo-----

The above matter having come before the Court on Wednesday, December 10, 1986, at the hour of 11:30 a.m., before Domestic Relations Commissioner Sandra N. Peuler, who, by stipulation of the parties, proceeded to hear the default divorce hearing in this matter. The Plaintiff was present in person and represented by counsel, Suzanne Marelius. The Defendant was present in person and represented by counsel, Phillip Story, Jr. The joint Stipulation of the parties was read into the record and having been approved by both parties and both counsel on the record, was received and approved by the Court. The Court also having reviewed the pleadings on file herein and based on the testimony presented by Plaintiff, and now being well advised in the premises, the Court does enter its Findings of Fact and Conclusions of Law as follows:

A-19

FINDINGS OF FACT

1. The parties herein are residents of Salt Lake County, State of Utah, and were such for three months immediately preceding the filing of this action.

2. The parties are husband and wife having been married June 4, 1953, in Elko County, State of Nevada.

3. There have been three children born as issue of this marriage, none of which is a dependent or under 18 years of age.

4. During the marriage, Plaintiff was treated cruelly by Defendant causing her great mental distress and anguish to the point where a continuation of the marital relationship was impossible and Plaintiff filed an action for divorce against Defendant.

5. There has been no real property acquired by the parties during the term of the marriage. In addition, the parties have acquired household furnishings, appliances, a 1984 Pontiac, a 1985 Toyota truck, and a 1986 Dodge.

6. During the term of the marriage, the parties incurred certain joint debts and obligations including obligations to Sears, Mastercharge, Visa, Granite Furniture, Castletons, Mervyns, and loans for the automobiles.

7. Each of the parties are able-bodied and employed. The Defendant is employed at Sperry Corporation and earns a gross annual income of approximately \$45,600.00 per year. Defendant

was a member of the Air Force for twenty-eight years and receives an Air Force pension of approximately \$1,428.00 per month. Plaintiff is employed part-time at The Cookery and earns \$4.00 per hour, a gross monthly income of approximately \$340.00.

8. Plaintiff is presently covered by Defendant's medical insurance with his employer, Sperry Corporation, and is also entitled to CHAMPUS medical insurance benefits.

9. Plaintiff is a beneficiary on certain life insurance policies on Defendant's life as follows: the Air Force Association Policy; \$36,000.00, Veteran's Group Life Insurance; \$50,000.00 Unisys Corporation Policy, and the Air Force Survivor's Benefit Plan, for which Defendant pays a \$157.00 monthly premium.

BASED UPON the foregoing Findings of Fact, this Court does enter its just and equitable Conclusions of Law as follows:

CONCLUSIONS OF LAW

1. The Court does have jurisdiction to hear this matter, and upon hearing, does conclude that the Plaintiff should be awarded a Decree of Divorce against Defendant, the same to become final on March 1, 1987.

2. The parties have entered into a Stipulation and Settlement Agreement which was read into the Court record December 10, 1986, and approved by both parties and their counsel in open Court. The Court finds that this Settlement Agreement is in full compliance with the law and should be incorporated in its entirety in the Court's Decree as set forth below.

3. The Defendant should pay to the Plaintiff for each of the months of January, February and March, 1987, the amount of \$785.00 and the amount of \$685.00 as of April, 1987, and thereafter, as monthly alimony and one-half of the military pension retirement benefits authorized under PL97-252, 10 USCS 1408 et seq. (Former Spouse's Protection Act). The Defendant further agrees to pay to Plaintiff one-half of any increases he receives in his retirement benefits and to pass along such increases at the time his benefits are increased. The parties agree that the support payments outlined in this paragraph will be payable by Defendant to Plaintiff one-half on the 5th and one-half on the 20th of each month. The parties further agree that Defendant's premium of \$157.00 per month which he agrees to pay for the Survivor's Benefit Plan is part of his total support payment to Plaintiff. The support payments outlined herein shall be payable to Plaintiff so long as she lives with the exception that they will cease upon Plaintiff's remarriage, cohabitation, or death.

4. The Defendant agrees to keep Plaintiff as the sole beneficiary under his Armed Forces Survivor Benefit Plan. Plaintiff will thus be treated as the Defendant's spouse for all purposes under the Plan. As the surviving spouse, Plaintiff will be entitled to any pre-retirement survivor annuity; and Plaintiff's consent will be required for any election of benefits by the Defendant, other than the qualified pre-retirement and retirement joint and survivor annuity as provided under Section 417 of the Internal Revenue Code of 1954, as amended.

5. The Defendant is ordered to maintain hospital and medical insurance in full force and effect for the benefit of Plaintiff as it was held at the time of the filing of this divorce action on August 30, 1985. This coverage consists of Plaintiff's entitlement to CHAMPUS benefits and full medical coverage with Defendant's employer, Sperry Corporation. The parties agree that Defendant will maintain Plaintiff's full medical insurance coverage as indicated to the extent allowable under applicable law, however, Defendant's premium contribution is not to exceed his premium contribution at the time of the divorce filing, August 30, 1985. Defendant agrees to pay all premiums or assessments due for Plaintiff's coverage during her lifetime and so long as the coverage referred to herein is available to Defendant, subject to the foregoing limitation.

6. Defendant should be ordered to maintain in full force and effect, for the benefit of Plaintiff as sole beneficiary, the life insurance policies listed as follows: the \$50,000.00 policy issued by Unisys Corporation; a \$36,000.00 policy issued by Veteran's Group Life Insurance until December 31, 1988; and the policy issued by the Air Force Association. Defendant agrees to pay all premiums, assessments or charges incurred for maintaining or converting these policies to make Plaintiff the sole beneficiary thereon.

7. Both of the parties should be awarded the personal property presently in their possession as has been previously

divided by them. In addition, Plaintiff should be awarded the 1984 Pontiac, including the debt thereon; and Defendant should be awarded the 1985 Toyota pickup and 1986 Dodge with the debts thereon. Defendant agrees to pay Plaintiff's car payment for the month of December, 1986, and thereafter Plaintiff will be responsible for the entirety of the debt remaining on the 1984 Pontiac.

8. The parties have previously apportioned their joint marital obligations and represent to the Court that these will be fully paid by the end of December, 1986. The parties should be responsible to assume and discharge their separate debts incurred subsequent to the date of the separation. The Defendant should be ordered to pay any balance presently due to Plaintiff's attorney, Suzanne Marelius, including any further reasonable legal fees and costs incurred relating to this proceeding, up until the date of entry.

DATED this 3 day of March, 1987.

BY THE COURT:

/s/ Sandra M. P. eulen
DAVID B. DEE
District Court Judge *pro Tempore*

SUZANNE MARELIUS (2081)
Attorney for Petitioner
LITTLEFIELD & PETERSON
426 South 500 East
Salt Lake City, UT 84102
Telephone: (801) 531-0435
Facsimile: (801) 575-7834

IN THE THIRD JUDICIAL DISTRICT COURT
IN AND FOR SALT LAKE COUNTY, STATE OF UTAH

FRANCES R. BOLLIGER,
Petitioner,

vs.

RONALD E. BOLLIGER,
Respondent.

-----ooOoo-----
AFFIDAVIT OF FRANCES BOLLIGER

Case No. 854903252 DA
Judge Henriod

STATE OF UTAH)
 ss.
SALT LAKE COUNTY)

-----ooOoo-----
FRANCES BOLLIGER, being first duly sworn upon oath deposes and states as follows:

1. I am the Petitioner in the above-matter and make this Affidavit of my own personal knowledge and belief.

2. I was married to Ronald Bolliger for 34 years and we raised three children together. When we divorced in 1987 I was working part-time as a waitress and he was employed full-time at Sperry Corporation. A review of the Court documents at that time show

I was earning \$4,800 per year and he was earning \$46,500. The Decree awarded me half his Airforce retirement \$714 per month, alimony \$685 per month for total annual income of \$21,588. At that time Mr. Bolliger's total earned and military retirement income less alimony was \$46,000.

3. Mr. Bolliger's last full year of employment was 1996 where his total adjusted gross income was \$90,040. In 1996 my total income was about \$17,664 from alimony and military retirement.

4. In approximately 1991 I ceased my part-time employment as a waitress because of health problems. At that time I was earning about \$500 a month from waitress work. Over the years I have had increasing problems with arthritis in my hands and legs which have impacted my ability to work in my usual employment as a waitress. I have been treated with steroids and other medications for this chronic arthritis pain without success. I developed ulcers in 1990 and had a ruptured ulcer and surgery that year. I have been prescribed Zantac since that time and a special diet which has increased my food cost. I suffered a stroke April 9, 1998 which has affected my left side. I was diagnosed with Bells Palsy in 1992 and continue to suffer from that disorder. I have very high blood pressure and take medication for that condition. I am scheduled for surgery this month to remove a bone fungus from my face.

5. My doctor has advised for the past several years that I am not to do any significant physical activity and that I not be employed. Considering my level of energy and medical needs I know that I am unable to maintain any reasonable level of employment. I was

VERIFICATION

STATE OF UTAH)
 : ss.
COUNTY OF SALT LAKE)

FRANCES BOLLIGER, being first duly sworn upon oath deposes and says that she has read the foregoing AFFIDAVIT and knows and understands the contents thereof and the same is true as to her own knowledge except to those matters herein stated upon information and belief as to those matters, she believes the same to be true.

DATED this 13 day of oct, 1998.

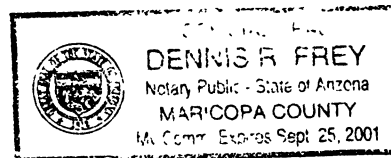
Frances Bolliger
FRANCES BOLLIGER

SUBSCRIBED AND SWORN to before me this 13 day of OCTOBER, 1998.

Dennis R. Frey
NOTARY PUBLIC
Residing at PHOENIX, AZ

My Commission Expires:

SEPT 25, 2001



Valley Neurology Associates, Ltd.

Dale R. Schultz, D.O., F.A.C.N.
Kenneth E. Root, Jr., D.O., F.A.C.N.
Gilbert J. Toffel, D.O.
Howard E. Weinstein, M.D., F.A.A.N.

Guy C. Cary, M.D.
James P. Schlichting, D.O.
Fern M. Arlen, M.D.
John F. MacKenzie, D.O.

September 29, 1998

Re: Frances Bolliger

To Whom It May Concern:


Please allow me to introduce myself as Ms. Bolliger's neurologist. She was first seen in the hospital on 4/9/98 feeling "not herself". At the same time she was reporting symptoms affecting her left arm and leg in the setting of a head CT scan documented right lacunar subcortical infarct. This was all consistent with a right thalamic stroke in the setting of very high blood pressure.

She continues to be seen in the office for the symptoms that brought her initially into the hospital. We are awaiting an MRI of the brain and carotid duplex ultrasound with focus on the vertebrobasilar system.

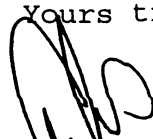
It is my opinion, given her neurologic deficits alluded to above, Ms. Bolliger is not fully neurologically intact nor would I advise her to work.

If you have any questions, please do not hesitate to contact me.

Thanking you for your consideration. I am,


Commission Expires
8-28-2002

Yours truly,


Guy C. Cary, M.D.

GCC/bc

Phoenix • 4244 North 19th Avenue • Phoenix, Arizona 85015 • 262-9465
Phoenix • 19841 North 27th Avenue, #403 • Phoenix, Arizona 85027 • 780-8838
Mesa • 1134 East University, #114 • Mesa, Arizona 85203 • 834-9575
Chandler • 485 South Dobson, #201 • Chandler, Arizona 85224 • 917-2784

A-28

30-3-5. Disposition of property — Maintenance and health care of parties and children — Division of debts — Court to have continuing jurisdiction — Custody and visitation — Determination of alimony — Nonmeritorious petition for modification.

(1) When a decree of divorce is rendered, the court may include in it equitable orders relating to the children, property, debts or obligations, and parties. The court shall include the following in every decree of divorce:

(a) an order assigning responsibility for the payment of reasonable and necessary medical and dental expenses of the dependent children;

(b) if coverage is or becomes available at a reasonable cost, an order requiring the purchase and maintenance of appropriate health, hospital, and dental care insurance for the dependent children;

(c) pursuant to Section 15-4-6.5:

(i) an order specifying which party is responsible for the payment of joint debts, obligations, or liabilities of the parties contracted or incurred during marriage;

(ii) an order requiring the parties to notify respective creditors or obligees, regarding the court's division of debts, obligations, or liabilities and regarding the parties' separate, current addresses; and

(iii) provisions for the enforcement of these orders; and

(d) provisions for income withholding in accordance with Title 62A, Chapter 11, Recovery Services.

(2) The court may include, in an order determining child support, an order assigning financial responsibility for all or a portion of child care expenses incurred on behalf of the dependent children, necessitated by the employment or training of the custodial parent. If the court determines that the circumstances are appropriate and that the dependent children would be adequately cared for, it may include an order allowing the noncustodial parent to provide

child care for the dependent children, necessitated by the employment or training of the custodial parent.

(3) The court has continuing jurisdiction to make subsequent changes or new orders for the custody of the children and their support, maintenance, health, and dental care, and for distribution of the property and obligations for debts as is reasonable and necessary.

(4) (a) In determining visitation rights of parents, grandparents, and other members of the immediate family, the court shall consider the best interest of the child.

(b) Upon a specific finding by the court of the need for peace officer enforcement, the court may include in an order establishing a visitation schedule a provision, among other things, authorizing any peace officer to enforce a court ordered visitation schedule entered under this chapter.

(5) If a petition for modification of child custody or visitation provisions of a court order is made and denied, the court shall order the petitioner to pay the reasonable attorneys' fees expended by the prevailing party in that action, if the court determines that the petition was without merit and not asserted or defended against in good faith.

(6) If a petition alleges substantial noncompliance with a visitation order by a parent, a grandparent, or other member of the immediate family pursuant to Section 78-32-12.2 where a visitation right has been previously granted by the court, the court may award to the prevailing party costs, including actual attorney fees and court costs incurred by the prevailing party because of the other party's failure to provide or exercise court-ordered visitation.

- (7) (a) The court shall consider at least the following factors in determining alimony:
- (i) the financial condition and needs of the recipient spouse;
 - (ii) the recipient's earning capacity or ability to produce income;
 - (iii) the ability of the payor spouse to provide support; and
 - (iv) the length of the marriage.
- (b) The court may consider the fault of the parties in determining alimony.
- (c) As a general rule, the court should look to the standard of living, existing at the time of separation, in determining alimony in accordance with Subsection (a). However, the court shall consider all relevant facts and equitable principles and may, in its discretion, base alimony on the standard of living that existed at the time of trial. In marriages of short duration, when no children have been conceived or born during the marriage, the court may consider the standard of living that existed at the time of the marriage.
- (d) The court may, under appropriate circumstances, attempt to equalize the parties' respective standards of living.
- (e) When a marriage of long duration dissolves on the threshold of a major change in the income of one of the spouses due to the collective efforts of both, that change shall be considered in dividing the marital property and in determining the amount of alimony. If one spouse's earning capacity has been greatly enhanced through the efforts of both spouses during the marriage, the court may make a compensating adjustment in dividing the marital property and awarding alimony.
- (f) In determining alimony when a marriage of short duration dissolves, and no children have been conceived or born during the marriage, the court may consider restoring each party to the condition which existed at the time of the marriage.
- (g) (i) The court has continuing jurisdiction to make substantive changes and new orders regarding alimony based on a substantial material change in circumstances not foreseeable at the time of the divorce.
- (ii) The court may not modify alimony or issue a new order for alimony to address needs of the recipient that did not exist at the time the decree was entered, unless the court finds extenuating circumstances that justify that action.
- (iii) In determining alimony, the income of any subsequent spouse of the payor may not be considered, except as provided in this subsection.
- (A) The court may consider the subsequent spouse's financial ability to share living expenses.
- (B) The court may consider the income of a subsequent spouse if the court finds that the payor's improper conduct justifies that consideration.
- (h) Alimony may not be ordered for a duration longer than the number of years that the marriage existed unless, at any time prior to termination of alimony, the court finds extenuating circumstances that justify the payment of alimony for a longer period of time.
- (8) Unless a decree of divorce specifically provides otherwise, any order of the court that a party pay alimony to a former spouse automatically terminates upon the remarriage of that former spouse. However, if the remarriage is annulled and found to be void ab initio, payment of alimony shall resume if the party paying alimony is made a party to the action of annulment and his rights are determined.
- (9) Any order of the court that a party pay alimony to a former spouse terminates upon establishment by the party paying alimony that the former spouse is cohabitating with another person.

30-3-3. Award of costs, attorney and witness fees — Temporary alimony.

(1) In any action filed under Title 30, Chapter 3, 4, or 6, and in any action to establish an order of custody, visitation, child support, alimony, or division of property in a domestic case, the court may order a party to pay the costs, attorney fees, and witness fees, including expert witness fees, of the other party to enable the other party to prosecute or defend the action. The order may include provision for costs of the action.

(2) In any action to enforce an order of custody, visitation, child support, alimony, or division of property in a domestic case, the court may award costs and attorney fees upon determining that the party substantially prevailed upon the claim or defense. The court, in its discretion, may award no fees or limited fees against a party if the court finds the party is impecunious or enters in the record the reason for not awarding fees.

(3) In any action listed in Subsection (1), the court may order a party to provide money, during the pendency of the action, for the separate support and maintenance of the other party and of any children in the custody of the other party.

(4) Orders entered under this section prior to entry of the final order or judgment may be amended during the course of the action or in the final order or judgment.